IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1592 of 1986

to

FIRST APPEALNo 1601 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE KSHITIJ R.VYAS
and
Hon'ble MR.JUSTICE H.K.RATHOD

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

KANJIBHAI HARIDAS PATEL

Versus

STATE OF GUJARAT.

Appearance:

1. First Appeal No. 1592 of 1986

MR GM AMIN for Petitioner No. 1

MR KM PATEL for Petitioner No. 1/1-1/6

Mr. M.K.Patel AGP for Respondent No. 1

CORAM : MR.JUSTICE KSHITIJ R.VYAS

and

MR.JUSTICE H.K.RATHOD

Date of decision: 19/09/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE H.K.RATHOD)

Common award made by the Assistant Judge, Panchmahals at Godhra in Land Acquisition Reference No. 10 of 1982 to 20 of 1982 dated 31st December, 1985 has been challenged by the appellants in this group of first appeals whereunder the reference court concerned has allowed the said references and has granted the additional amount of compensation including solatium and costs and interest at the rate of 4 % p.a. from the date of taking over the possession till the date of actual payment less the amount already received by the appellants. As per the impugned award, the reference court has granted Rs.190.00 per Are for Kyari lands and irrigated lands andRs.140.00 per Are for unirrigated Jarayat lands and Rs.100.00 per Are for the waste lands. The reference court has calculated compensation as per the decision in case of each of the claimants at this rate and the reference court has prepared tabular form in respect of the compensation payable to each of the claimants as per the details given in the tabular form attached to the judgment. The reference court has also declared that each of the appellants will be entitled to solatium at the rate of 15 per cent on the additional amount of compensation and they would also be entitled to interest on the additional amount of compensation from the date of taking of the possession till the payment is made at the rate of 4 per cent per annum. It was further directed by the reference court under the impugned award that the claimants whose lands were of new tenure shall have to be paid five per cent less on the additional amount of compensation being the Government share. All the said references were made by the Special Land Acquisition Officer at the instance of the appellants herein. All the said references were arising out of the award made by the special land acquisition officer, Dahod in Land Reference No. 74 of 1979 dated 8th March, 1982 arising out of the common acquisition for common purpose i.e. Machhana Nala Dam Scheme and all the lands are of Nansalai, and are almost of the same quality and by consent of the parties, said references were disposed of by the reference court by common judgment. Reference No. 10 of 1982 was treated as the main reference and all the evidence has been recorded and received in that case. All the said references were arising out of the common

acquisition . The facts leading to the present appeals, in brief, are to the effect that the State of Gujarat intended to erect a dam over Machhan river and plans were prepared and proposal was made to the Government and the Government accepted it and for that purpose, several lands were proposed to be acquired to create a reservoir which lands included were of village Nansalai, Sapoi Tandi and other small villages. The Government declared its intention of acquiring several survey numbers including the lands involved in the said references particularly described in the schedule attached to the judgment of the reference court and a notification under section 4 of the Land Acquisition Act was published in the Government Gazette on 25.4.1974. After issuance of the notices, notification under section 6 of the Land Acquisition Act was published in the Government Gazette on 28.4.1977. Notices under section 9 of the Act were also issued to various claimants and the claimants herein appeared before the Special Land Acquisition Officer and claimed compensation for their lands at the rate of Rs.500.00 per Are for Kyari lands, at a rate of Rs.325.00 per Are for Jarayat lands and at a rate of Rs.125.00 per Are for waste lands. It was the submission of the claimants that inspite of that, the special land acquisition officer made an award dated 8.3.1982 and awarded Rs.120.00 per Are for Kyari land, Rs.80.00 per Are in respect of Jarayat lands and Rs.1.00 per Are in respect of waste lands. It was the case of the claimants before the reference court that the special land acquisition officer ought to have awarded compensation as prayed for by them but the special land acquisition officer has not taken into consideration the fertility of the lands, the sale instances of the surrounding lands and has not considered the evidence produced by the claimants and, therefore, it was prayed by the claimants before the reference court that the compensation as prayed for by them should be awarded by allowing the said references.

Before the reference Court, one witness Kanji Haridas Patel was examined at Exh. 10 who was the claimant in Land Acquisition Reference No. 18 of 1982. Except the said witness, no other witness has been examined by the claimants before the reference court. The appellants had not produced any documentary evidence before the reference court. The appellant has also not produced any documents in support of his deposition and whatever documents were produced before the Special Land Acquisition Officer are not produced and proved before the Reference Court, and, therefore, considering the evidence on record, the reference court has decided the

matter and has awarded additional compensation in favour of the appellants under its award dated 31st December, 1985.

On the basis of these facts, it was submitted by Mr. Amin, learned advocate for the appellants that the reference court has committed error in not considering the amendment made in the Land Acquisition Act, 1894 dated 24th September, 1984 made effective from 30th April, 1982. He has also submitted that as per the said amendment, all the cases pending before any Court should be given the benefit of the amended Act and as per the amended Act, the appellants are entitled to have the solatium at the rate of 30 per cent and interest at the rate of 9 per cent per annum for the first year and at the rate of 15 % per annum from the date of taking over possession of the lands of the appellants. It was further submitted by him that as per section 23 [1A] of the Act, the appellants are entitled to have 12 per cent increase because in the instant case, section 4 notification was issued on 25th April,1974 whereas the award in question was given by the Special Land Acquisition Officer on 8th March, 1982 and, therefore, the appellants are entitled to have 12 per cent increase on the market rate for the period from 24th April,1974 to 8th March, 1982, per year. He also submitted that the reference court has awarded additional compensation contrary to the evidence which was led and produced before the special land acquisition officer. He has also submitted that the certificate of the Gram Sevak dated 7th March,1975 as well as the Additional Divisional Agriculture Officer about crop yields of the lands in question were produced but the same were not considered by the reference court. He has also submitted that the appellants have received award for raising the highest yields of crop from the land in question and for that, certificate issued by the agriculture department was very much there at Exh. 16 but the same was not considered by the reference court. He has further submitted that the reference court has also ignored two wells and the oil engine in survey no.183/1 and has not awarded any additional compensation to the claimants in that regard. According to his submission, the oral evidence of the appellant has also been ignored by the reference court. He has also submitted that the appellant has produced material evidence and the documents before the special land acquisition officer but the said record has been totally ignored by the reference court and in doing so, the reference court has committed an error. In short, it is his submission that the reference court has ignored the provisions of the amended Act as well as the oral and

documentary evidence produced by the appellant before the special land acquisition officer and also before the reference court and, therefore, the award made by the reference court is required to be modified by enhancing the compensation awarded to the claimants.

On the other hand, learned AGP Mr. M.K.Patel appearing for the respondent has submitted that against the award made by the special land acquisition officer dated 8th March, 1982, references were made by the special land acquisition officer before the reference court at the instance of the original claimant. He has submitted that the reference court not being the appellate court, was not in error in not considering the record which was produced by the appellant before the special land acquisition officer. According to him, unless and until the evidence produced before the special land acquisition officer and relied upon by the said officer is produced and proved before the reference court, the reference court cannot rely upon such evidence and therefore, reference court has not committed any error in that regard since the evidence produced before the special land acquisition officer was not produced and proved by the appellant before the reference court. He has further submitted in this case, the appellant has not produced and proved the evidence which was produced before the special land acquisition officer and, therefore, in absence of documents, the reference court was right in considering the admission on the part of the special land acquisition officer and was also right in granting additional compensation to the appellant claimant and in doing so, no error has been committed by the reference court and, therefore, according to him, these appeals are required to be dismissed.

We have considered the submissions made by the learned advocates for the parties. We have perused the impugned award made by the reference court. We have also perused the original record wherein the special land acquisition officer made the award dated 8th March, 1982 and pursuant to the reference made by the special land acquisition officer at the instance of the claimants, reference court delivered the award in the reference. The contention raised by Mr. Amin that sufficient evidence has been produced and proved by the appellants before the special land acquisition officer but the same has not been taken into consideration by the reference court has been considered by this court in light of the observations made by the apex court in case of Chimanlal Hargovinddas versus Special Land Acquisition Officer, Poona and another reported in AIR 1988 SC 1652. The apex

court has observed as under on page 1653 of the report:

"While disposing of a reference, the following factors must be etched on the mental screen.

(1) A reference under section 18 of the Land Acquisition (1) A reference under section 18 of the Land Acquisition Act is not an appeal against the award and the Court cannot take into account the material relied upon by the Land Acquisition officer in his Award unless the same material is produced and proved before the Court.

(2) So also the Award of the Land Acquisition officer is not to be treated as a judgment of the trial Court open or exposed to challenge before the Court hearing the Reference. It is merely an offer made by the Land Acquisition officer and the material utilized by him for making his valuation cannot be utilized by the Court unless produced and proved before it. It is not the function of the Court to suit in appeal against the Award, approve or disapprove its reasoning, or correct its error or affirm, modify or reverse the conclusion reached by the Land Acquisition officer, as if it were an appellate court.

(3) The Court has to treat the reference as an original proceeding before it and determine the market value afresh on the basis of the material produced before it.

(4) The claimant is in the position of a plaintiff who has to show that the price offered for his land in the award is inadequate on the basis of the materials produced in the Court. Of course the materials placed and proved by the other side can also be taken into account for this purpose."

Similar view has been taken by this court in the matter of Collector of Panchmahals v. Desai Keshavlal Panalal, deceased by his heirs Kusumben and others reported in X GLR page 931. The Division Bench of this COurt has observed as under in the said decision at page 931 of the report :

"The part containing reasons given by the Land Acquisition Officer does not necessarily form part of the record unless the land acquisition

> officer has been examined and he has stated the same which led him to come to a particular conclusion. This part can also be taken into account if both the sides agree to the same being read as a part of the evidence in the case. If, however, that award is challenged by the claimants on the ground of inadequacy of compensation or otherwise permissible in law, and taken to Court by a reference made under sec. 18 of the Act, a judicial proceeding commences before the Court and he has to show to the satisfaction property under acquisition and that he should be awarded at a particular rate or price set out in the reference. In those circumstances, the trial Court does not sit in appeal on any such award passed by the Land Acquisition Officer and consequently about his having dealt with the matter in a careless manner and the like and even if on the material before it, it was obliged to pass any remarks, it must be said that they should be in a restrained and dignified language."

In view of these two decisions of the apex court as well as of this court, the contention raised by Mr. Amin cannot be accepted simply on the ground that whatever material has been produced by the appellant before the Special Land Acquisition Officer cannot be relied upon by the reference court unless the same is produced and proved by the appellant before the reference court and, therefore, in view of the aforesaid two decisions, in our opinion, the reference court was right in ignoring the material which was placed before the special land acquisition officer.

As regards the contention raised by Mr. Amin that the evidence of the witness Kanjibhai H. Patel who was examined at Exh. 10, who is the claimant in reference case no. 18 of 1982 has been ignored by the reference court , it is necessary to make a reference of the observations made by the reference court. In his oral evidence at Exh. 10, it was deposed by him that the lands involved in the said references were capable of yielding three crops in a year and there were two well in survey no. 81/1 belonging to him. It was also deposed by him that he had installed an oil engine and he was giving water to other farmers also from his well; according to him, the well was a katchcha one but still it was having fabulous quantity of water. It was further submitted by him that he had prepared a pakka water course for irrigating his fields and that water course

was about 500 ft. long. Another water course from another well was 375 ft.long. Such assertions made by the said witness in his examination in chief were challenged by the other side in cross examination and it was admitted by the said witness that whatever he stated about the crops was only his inference and estimates and not from any concrete evidence and hence no compensation can be fixed on the basis of the crop yielding or by any other method nor the price of the well or the water course can be awarded to the said claimant. It has also been observed by the reference court that in his evidence, he has stated about the well in the field of Devabhai Vallabhbhai but no evidence has been produced to that effect. If the wells were in existence in the fields, at least those wells must have been shown in the pani patrak but no such pani patrak has been produced by the claimants. However the claimants relied upon some sale instances of round about villages and those instances may prove useful to determine the approximate market price of the land which can be awarded to the claimants. The witness Kanji Haridas has stated in his evidence that all the lands of Nansalai are just as the lands of Jhalod and he quoted an instance between the marketing committee of Jhalod and he quoted an instance wherein the marketing committee of Jhalod purchased a piece of land admeasuring 3 A.5 G. for Rs.29151.00. In that regard, the reference court has observed that no documentary evidence has been produced; but presuming for the sake of an argument that the sale instances quoted by the claimant is a correct instance, then, price of the land comes to Rs.233.00 per Are. It has also been observed by the reference court that in his cross examination, the witness has admitted that he had no personal knowledge about the land purchased by the market committee and he was not even present when the document was prepared. It has also been observed that he had no personal knowledge about the negotiations that had taken place and it appears that the witness is deposing simply from his inference; as a matter of fact,it appears that the land purchased by the market committee was purchased by an institution and unless it was in a pressing need, it would not be giving fabulous price and, therefore, his sale instance cannot be relied upon to fix the price of the land in question. The witness however admitted that in their locality, the lands were sold at the rate of Rs.8500.00 per Acre. This admission of the claimant is one of the best evidence to show the price of the land if in this very locality. The reference court was of the view that if only one Acre of the land was sold for Rs.8500.00, on calculation, the price per Are would come to Rs.207.00. However if only one are of the land was

sold,it was a small piece of land and naturally its price cannot be quoted with big plots of land which have been acquired by the State. The reference court was also of the view that for this instance, the claimant has not produced any documentary evidence to show as to which area of the land was sold and, therefore, the reference court observed that it should presume that it was only 1 Acre of land sold for Rs.8500.00. In absence of any evidence for fixing the price of the present lands, it has been left to only some guess work. The State of Gujarat did not produce any evidence about the sale instances in the locality. However, from the award made by the special land acquisition officer, the reference court observed that it appears that for erecting Machhan Nala Dam several lands of Raniyar, Tandi, Sapoi and Varod etc. were acquired. Therefore, the reference court observed that the award passed by the special land acquisition officer is certainly not an evidence against the claimant but still there are certain admissions made in award which can be taken into consideration and from the several sale instances quoted by the said officer in the award at Exh. 2, it is clear that the average price of the land in Nansalai area comes to Rs.180.00 per Are so far as Kyari land is concerned. The reference court, however, awarded Rs.190.00 per Are to the claimants for Kyari and irrigated Jarayat land is concerned and the reference court was having no reason to deviate from the standard adopted by the special land acquisition officer and granted Rs.140.00 per Are for unirigated Jarayat land and Rs. 100.00 per Are for waste land and accordingly made the award as stated earlier.

We have perused the award made by the reference court.According to our opinion, the reference court was right in discussing the oral evidence led by the appellant and the documents produced by the appellant. The reference court was also right in observing that none of the documents and the oral evidence of the witness K.H. Patel Exh. 10 is supporting the say of the appellant before the reference court and, therefore, relying upon some admissions made by the special land acquisition officer, the reference court has drawn the conclusions as stated above and has granted additional compensation of the land in question. Therefore, in view of these facts, according to our opinion, the reference court has rightly discussed the evidence and has not relied upon the evidence of the appellant Exh.l0 for want of proof and in doing so,the reference court has not committed any error. Therefore,so far as the grant of additional compensation is concerned there is no error committed by the reference court and that part of the

award does not require any modification.

As regards the contention raised by Mr. Amin that the reference court has committed error in not considering the amendment made in the Land Acquisition Act, 1894 dated 24th September, 1984 made effective from 30th April, 1982 and that as per the said amendment, all the cases pending before any Court should be given the benefit of the amended Act and as per the amended Act, the appellants are entitled to have the solatium at the rate of 30 per cent and interest at the rate of 9 per cent per annum for the first year and at the rate of 15 % per annum from the date of taking over possession of the lands of the appellants, we have taken into consideration the provisions of the amended Act. According to our opinion, the special land acquisition officer has passed the award on 8th March,1982 and the reference were decided by the reference court on 31st December,1985 and in between the amended provisions of the Land Acquisition Act would apply and, therefore, on that basis, the appellants herein are entitled to 30 per cent solatium upon the additional compensation as well as interest as per the provisions of the amended Act. As per sub section (1A) of section 23 of the amended Act, in addition to the market value of the land, as above provided, the Court shall in every case award an amount calculated at the rate of per centum per annum on such market value for the period commencing on and from the date of the publication of the notification under section 4, sub section (1) in respect of such land to the date of the award of the Collector or the date of taking over possession of the land whichever is earlier. As per sub section (2) of section 23 of the amended Act, in addition to the market value of the land, as above provided, the COurt shall in every case award a sum of thirty per centum on such market value in consideration of compulsory nature of acquisition. This aspect has been considered by the Constitutional Bench of the apex court in case of Union of India and another versus Raghubir Singh (dead) by LRs etc. reported in AIR 1989 SC 1933 wherein the apex court has observed as under:

"The words 'any such award' are intended to have deeper significance, and in the context in which those words appear in S. 30(2), it is clear that they are intended to refer to awards made by the Collector or court between 30 April,1982 and 24th September,1984.In other words, S.30(2) of the Amended Act extends the benefit of the enhanced solatium to cases where the award by the Collector or by the Court is made between 30

April, 1982 and 24 September, 1984 or to appeals against such awards decided by the High Court and the Supreme Court whether the decisions of the High Court or the Supreme Court are rendered before 24 September 1984 or after that date. All that is material is that the award by the Collector or by the Court should have been made between 30 April, 1982 and 24 September 1984. It cannot be said that the words 'any such award' only mean the award made by the Collector or Court, and carry no greater limiting sense. No such words of description by way of identifying the appellate order of the High COurt or of the Supreme Court were necessary. Plainly, having regard to the existing hierarchical structure of forum contemplated in the parent Act those appellate orders could only be orders arising in appeal against the award of the Collector or the Court. "

Therefore, in view of the observations made by the apex court in the aforesaid decision and also considering the effect of the provisions of section 30 of the Amended Act, there is substance in the submission made by Mr. Amin and, therefore, the appellants are entitled to 30 per cent solatium on the basis of the fact that the award was made by the Special Land Acquisition Officer on 8th March,1982 and the reference was decided by the reference court on 31st December, 1985 and, thus, both the requirements of the amended Act in respect of section 30 are satisfied in the facts and circumstances of the case and, therefore, the appellants are entitled 30 per centum solatium on the total amount of compensation.

Similarly, the appellants are also entitled to have interest as per the provisions of the section 28 as amended by Act 68 of 1984 and Sec. 30(2) of the Act 68 of 1984 relating to 'transitory provisions'. Section 28 provides that if the sum which, in the opinion of the Court, the Collector ought to have awarded as compensation is in excess of the sum which the Collector did award as compensation, the award of the Court may direct that the Collector shall pay interest on such excess at the rate of nine per centum per annum from the date on which he took possession of the land to the date of payment of such excess into court.

Proviso (as inserted by Act 68 of 1984) provides that the award of the Court may also direct that where such excess or any part thereof is paid into Court after the date of expiry of a period of one year from the date

on which possession is taken, interest at the rate of fifteen per centum per annum shall be payable from the date of expiry of the said period of one year on the amount of such excess or part thereof which has not been paid into Court before the date of such expiry. Therefore, the appellants are entitled to 9 per cent interest for a period of one year and 15 % as per proviso of amended Section 28 on the additional compensation granted by the reference court.

Learned advocate Mr. Amin has also submitted that on whatever compensation has been awarded to the appellant under section 23 of the Act in total, the appellants are entitled to have interest which includes the solatium granted by the reference court. Thus, as per his submission, the interest is also required to be calculated on the amount of solatium granted by the reference court. He has relied upon the decision of the apex court in case of Sunder versus Union of India reported in 2001(3) GLH page 446. This aspect has been made clear by the apex court in the said decision. Para 24 and 26 of the said decision are reproduced as under:

"The proviso to section 34 of the Act makes the position further clear. The proviso says that "if such compensation, over is not paid within one year from the date of taking possession of the land, interest shall stand escalated to 15 per cent per annum from the date of expiry of the said period of one year 'on the amount of compensation or part thereof which has not been paid or deposited before the date of such expiry'. It is inconceivable that the solatium amount would attract only the escalated rate of interest from the expiry of one year and that there would be no interest on solatium during the preceding period. What the legislature intended was to make the aggregate amount under sec.23 of the Act to reach hands of the person as and when 'the award is passed, at any rate as soon as he is deprived of the possession of his land. Any delay in making payment of the said sum should enable the party to have interest on the said sum until he receives the payment. Splitting up the compensation into different components for the purpose of payment of interest under section 34 was not in the contemplation of the legislature when that section was framed or enacted. "

Para 26 of the said report reads as under:

"We think it useful to quote the reasoning advanced by Chief Justice S.S. Sandhawalia of the Division Bench of the Punjab & Haryana High COurt in State of Haryana versus Smt. Kailashvati and others (supra); 'once it is held as it inevitably must be that the solatium provided for under section 23 (2) of the Act forms an integral and statutory part of the compensation awarded to the land owner, then, from the plain terms of section 28 of the Act, it would be evident that the interest is payable on the compensation awarded and not merely on the market value of the land. Indeed, the language of section 28 does not even remotely refer to market value alone and in terms talks of compensation or the sum equivalent thereto. The interest awardable under section 28 therefore would include within its ambit both the market value and the statutory solatium. It would be thus evident that the provisions of section 28 in terms of warrant and authorise the grant of interest on solatium as well."

Therefore, in view of the observations made by the apex court in the aforesaid decision and also considering the effect of amended section 28 of the Act, the appellants are also entitled to have the interest on the amount of solatium as well. As regards the submission of Mr. Amin that the appellants are entitled to have 12 per cent increase of the market value under section 23(1A) of the Act, we have examined the provisions of section 23(1A) of the Act. As per sub section (1A) of section 23 of the amended Act, in addition to the market value of the land, as above provided, the Court shall in every case award an amount calculated at the rate of per centum per annum on such market value for the period commencing on and from the date of the publication of the notification under section 4, sub section (1) in respect of such land to the date of the award of the Collector or the date of taking over possession of the land whichever is earlier. This amendment has been brought into statute by Amendment Act 68 of 1984 under section 30 of the Act and, therefore, these provisions will apply to the cases wherein the Collector has passed the award subsequent to 30th APril,1982 whereas in the instant case, the award was made by the Special Land Acquisition Officer on 8th March, 1982 which is not subsequent to 30th April, 1982 and in view of this, the appellants are not entitled to have 12 per cent increase on the market value of the land in question as contended by Mr. Amin. We, therefore,

reject this contention raised by Mr. Amin.

In view of the above observations made by us and also considering the effect of the Amended Act, we are of the view that there is no error committed by the reference court in granting additional compensation in favour of the appellants and the additional compensation granted by the reference court is just, proper and that part of the award would not require any interference of this court in these appeals. However, so far as the solatium is concerned, the reference court has committed error in not considering the effect of the provisions of the Amended Act of 1984. Considering the effect of section 30 of the amended Act, the appellants are entitled to 30 per cent solatium on the amount of compensation which has been awarded by the concerned authority. The appellants are also entitled to get interest on the total amount of compensation including solatium in accordance with section 28 of the Amended Act 68 of 1984, including the amount of solatium which has been awarded by this court.

In view of the above, present appeals are partly allowed to the extent indicated hereinabove and the award made by the reference court in Land Reference No.10 of 1982 to 20 of 1982 dated 31st December, 1985 shall stand modified accordingly with no order as to costs.

Since all the appeals are disposed of finally by this court, office is directed to send the original record forthwith to the concerned reference court.

Dt.19.9.2002. (Kshitij R.Vyas,J.)

(H.K. Rathod,J.)

Vyas